



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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August 12, 2016

Via electronic mail
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RE: FOIA Request for Review – 2015 PAC 34767

Dear Mr. Hrodey and Ms. Gibson:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that the City of Woodstock (City) improperly redacted certain portions of the records responsive to Mr. Robert T. Hrodey's February 27, 2015, FOIA request.

On that date, Mr. Hrodey submitted a FOIA request to the City seeking certain records related to a traffic accident that occurred on Wednesday, February 25, 2015, involving a named individual. On March 9, 2015, the City provided responsive records with portions redacted pursuant to sections 7(1)(a) and 7(1)(b) of FOIA (5 ILCS 140/ 7(1)(a), (1)(b) (West 2014)). With respect to section 7(1)(a), the response asserted that the federal Driver's Privacy Protection Act (DPPA) (18 U.S.C. § 2721 *et. seq.* (West 2014)) specifically prohibits disclosure of certain information redacted from the records. On April 15, 2015, Mr. Hrodey submitted this Request for Review contesting the redactions.

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On April 20, 2015, this office forwarded a copy of the Request for Review to the City and asked it to provide a detailed explanation of the legal and factual basis for the asserted exemptions, together with unredacted copies of the records for our confidential review. On May 13, 2015, the City provided this office with the records and its written response. On May 18, 2015, this office forwarded the City's response to Mr. Hrodey, who replied by reiterating that the DPPA does not prohibit disclosure of the redacted information.

DETERMINATION

"All records in the custody or possession of a public body are presumed to be open to inspection and copying." 5 ILCS 140/1.2 (West 2014); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). Any public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2014). The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

Section 7(1)(a) of FOIA/ Federal Driver's Privacy Protection Act

Section 7(1)(a) of FOIA exempts from inspection and copying "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The City cited the DPPA as the federal law that prohibited the disclosure of the information redacted from the responsive records. The DPPA generally prohibits officers, employees, and contractors of a state department of motor vehicles (DMV) from disclosing or otherwise making available "personal information" for any use not permitted under the limited exceptions set forth in the Act. *See* 18 U.S.C. § 2721(a)(1) (West 2014); *Maracich v. Spears*, 133 S. Ct. 2191, 2198 ("Disclosure of personal information [contained in the records of state DMVs] is prohibited [by the DPPA] unless for a purpose permitted by an exception listed in 1 of 14 statutory subsections."). In addition, section 2722(a) of DPPA (18 U.S.C. §2722(a) (West 2014)) states that "[i]t shall be unlawful for any person knowingly to obtain or disclose personal information[]from a motor vehicle record[.]" *See also Dahlstrom v. Sun-Times Media*, 777 F.3d 937, 941-42 (7th Cir. 2015) (concluding that a newspaper violated the DPPA by knowingly obtaining a police officer's personal information from motor vehicle records from the Illinois Secretary of State, which it proceeded to publish). Section 2725(3) of DPPA (18 U.S.C. § 2725(3) (West 2014)) defines "personal information" as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, **but does not include information on vehicular accidents, driving violations, and driver's status.**" (Emphasis added).

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We have reviewed the records in question, which consist of an Illinois Traffic Crash Report, an incident report, and a police department case report, all of which concern the investigation of a fatal traffic accident. The City redacted names, dates of birth, addresses, drivers' license numbers, license plate information, Vehicle Identification Numbers (VINs), vehicle make, model, and year, and the vehicle owner's name and address from the records. The City's response to this office asserts that the redacted information falls squarely within the DPPA's definition of "personal information" and that because the information was obtained, or verified, from motor vehicle records, the City is prohibited from disclosing it:

As a matter of routine, police officers obtain the names, dates of birth, addresses, and driver's license numbers of those involved in traffic accidents or traffic incidents by asking for the physical driver's license or state ID issued by the Secretary of State. If an individual does not have a driver's license or state ID, the police officer will ask the individual for his or her name and date of birth. In any event, whether the officer is provided with a driver's license or state ID or is simply told a name and date of birth, the police officer for his safety inputs the relevant information into the LEADS [Law Enforcement Agencies Data System] program, which uses Secretary of State motor vehicle date [sic] * * * when investigating a traffic accident or incident, a police officer will input into LEADS the information off of the vehicle license plates involved. The LEADS program then provides the police officer with the vehicle VIN, make, model, year, and vehicle owner name and address. We believe that all the foregoing information falls squarely within the definition of "personal information" as defined by the DPPA, and that because it was obtained through motor vehicle records, i.e., driver's license, state ID, a vehicle license plate, and/or LEADS, that its disclosure is prohibited.³

The DPPA's legislative history reveals that it was enacted to address two specific public policy objectives. The primary objective was "to protect the personal privacy and safety of all American licensed drivers" by preventing motor vehicle data from being obtained and used for committing crimes. 103 Cong. Rec. H.2522 (daily ed. Apr. 20, 1994). The secondary objective was to prevent states from selling personal information to businesses engaged in direct marketing and solicitation without the driver's consent. *See Maracich*, 133 S. Ct. at 2198 ("The

³Letter from Jennifer J. Gibson to Sarah Pratt, Public Access Counselor, Office of the Attorney General (May 1, 2015), at 1-2.

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second concern related to the State's common practice of selling personal information to businesses engaged in direct marketing and solicitation."); *Dahlstrom*, 777 F.3d at 944.

The plain language of the definition of "personal information" in DPPA, however, expressly carves out an exception for information in law enforcement records relating to vehicular accidents, driving violations, and driver status. See 103 Con. Rec. H.2522 (daily ed. Apr. 20 1994) (statement of Rep. Moran) ("It is very important to note that the amendment in no way affects access to accident information about the car or driver."), available at 1994 WL 140035; see also *Mattivi v. Russell*, 2002 WL 31949898, *4 (D. Colo. Aug. 2, 2002) (concluding the statute's "plain language * * * makes clear that Congress did not intend 'information on vehicular accidents' to be included within the Act's prohibition of disclosures of 'personal information.'"); Fla. Op. Atty. Gen. No. 2010-10, issued April 13, 2010 ("Once personal information contained in a motor vehicle record is received from the department and used in creation of new records, however, it is no longer protected by DPPA [or the Florida implementing statute]."); Wis. Op. Atty. Gen. No I-02-08, issued April 29, 2008 ("We believe it is reasonable to interpret this exclusion [for information concerning vehicular accidents, driving violations, and driver's status] from the 'personal information' definition to mean that information such as a driver's name, address, and telephone number are not encompassed in the personal information protected by the DPPA when that information is incorporated into a document such as an accident report."); Ky. Att'y Gen. No. 02-ORD-197, issued January 29, 2002 (stating that the DPPA "is inapplicable to law enforcement agencies, and the accident reports they generate, notwithstanding the fact that some of the information that appears in an accident report is extracted from motor vehicle records.").

In addition, the disclosure of "personal information" obtained from motor vehicle records for use in connection with law enforcement purposes is a "permissible use" under the DPPA. Section 2721(b) of the Act (18 U.S.C. §2721(b) (West 2014) identifies certain uses for which "personal information" is permitted to be disclosed. One of the permitted disclosures of personal information is "[f]or use by any government agency, including any court or *law enforcement agency*, in *carrying out its functions*, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions." 18 U.S.C. §2721(b)(1) (West 2014). (Emphasis added). In addition, section 2721(c) of DPPA⁵ (18 U.S.C. §2721(c) (West 2014)) permits law enforcement agencies to redisclose the information that it obtained from motor vehicle records for purposes related to law enforcement functions.

⁵See section 2721(c) of DPPA, states "[a]n authorized recipient of personal information * * * may resell or redisclose the information only for a use permitted under subsection (b) [2721(b) of DPPA]."

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The DPPA's legislative history makes clear that the law is intended to provide law enforcement officers wide breadth to carry out their duties. *See Parus v. Kroeplin*, 402 F. Supp. 2d 999, 1005-06 (W.D. Wis. Dec. 6, 2005) ("Although the Act was intended to 'prevent stalkers, harassers, would-be criminals and other unauthorized individuals from obtaining and using personal information from motor vehicle records,' it was not intended to impede the ability of law enforcement officers to carry out their duties."). Congressional hearing transcripts illustrate that lawmakers specifically discussed the latitude that law enforcement agencies should be given to perform their duties. Senator Harkin stated, "'with respect to law enforcement agencies, [section 2721(b)(1)] should be interpreted so as not to in any way restrict or hinder law enforcement and crime prevention strategies,' even when those strategies might include releasing personal information to the general public." *Parus*, 402 F. Supp. 2d at 1006 (quoting 139 Cong. Rec. S15962 (daily ed. Nov. 17, 1993) (statement of Sen. Harkin) (discussing legislative history in determining that police dispatcher engaged in a law enforcement function, and therefore, did not violate the DPPA by relaying personal information obtained from motor vehicle records to the Department of Natural Resources' warden because the police dispatcher had no reason to believe that the warden sought the information for personal reasons)).

As the City points out, its police department uses information that it obtains from motor vehicle records for law enforcement functions such as ensuring police officers' safety, confirming a driver's information, documenting contact with an individual, ensuring that there are no outstanding warrants, and creating law enforcement records including investigatory reports, accident reports, and police reports. These uses of "personal information" clearly involve the police department carrying out its essential functions. *Compare Senne v. Village of Palatine*, 6 F. Supp. 3d 786, 792 (N.D. Illinois, Nov. 27, 2013) (finding village's use of "personal information" printed on tickets constituted a "permissible use" under DPPA) with *Schierts v. City of Brookfield*, 868 F. Supp. 2d 818, 820-21 (E.D. Wis. June 20, 2012) (holding police officer violated DPPA when he obtained an address from DMV records and provided the address to the individual's ex-girlfriend for purposes of the ex-girlfriend using the address in a custody dispute); *Deicher v. City of Evansville*, 2007 WL 5323757 (W.D. Wis. April 12, 2007) (finding police officer violated DPPA when he accessed DMV records to obtain the new address of a civilian's former wife) overruled on other grounds by *Deicher v. City of Evansville*, 545 F.3d 537 (7th Cir. 2007).

The City contends that the Seventh Circuit Court of Appeals' decision in *Dahlstrom v. Sun-Times Media* restricts "personal information" from being disclosed via police and accident reports tendered in response to a FOIA request "because the defendant in that case violated DPPA by obtaining and publishing certain records that contained personal information

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which it received from a FOIA request sent to the City of Chicago.⁶ This, however, is an imprecise reading of *Dahlstrom*. In *Dahlstrom*, the court makes clear that the *Sun-Times* obtained only the names and photographs of police officers from the City of Chicago in response to its FOIA request; the remaining personal information at issue in this case was obtained directly from the Illinois Secretary of State. *Dahlstrom*, 777 F.3d at 941 ("The Officers contend – and Sun-Times has not disputed – that Sun-Times knowingly obtained this additional identifying information from motor vehicle records maintained by the Secretary of State. * * * The Officers do not challenge Sun-Times's publication of their photographs or names, as they concede that Sun-Times lawfully obtained that information pursuant to its FOIA request."). In fact, the *Dahlstrom* Court makes clear that if the type of information contained in motor vehicle records is obtained from a source other than a state DMV, including pursuant to a FOIA request to a police department, the DPPA does not prohibit disclosure. *Dahlstrom*, 777 F.3d at 949-50 ("The DPPA proscribes only the publication of personal information that has been obtained from motor vehicle records. The origin of the information is thus crucial to the illegality of its publication – the statute is agnostic to the dissemination of the very same information acquired from a lawful source. * * * much of which [personal information] can be gathered * * * from other lawful sources (including, of course, a state FOIA request)"). Therefore, this office concludes that the DPPA does not require the redaction of "personal information," as defined by the DPPA, from law enforcement records provided in response to a FOIA request.

The City also appears to contend that the VIN, make, model, year, and vehicle owner name and address must be redacted if the information derives from or is confirmed through LEADS. Section 1240.80(d) of title 20 of the Administrative Code (20 Ill. Adm. Code § 1240.80(d) (2014), old Part repealed and new Part adopted at 23 Ill. Reg. 7521, effective June 18, 1999) provides that "LEADS data shall not be disseminated to any individual or organization that is not legally authorized to have access to the information." That provision implements the Criminal Identification Act (20 ILCS 2630/0.01 *et seq.* (West 2014)). This office has consistently determined that only information specifically generated from the LEADS database, such as the LEADS identification number or information showing the agencies that accessed the database and the time and date of queries, is prohibited from disclosure by the above provisions; basic information identifying a driver or his or her vehicle, such as vehicle registration information, that is obtained from the LEADS database and incorporated into an investigative report is not exempt from disclosure under section 7(1)(a) of FOIA. See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 13417, issued May 18, 2011; Ill. Att'y Gen. PAC Req. Rev. Ltr. 12402, issued March 22, 2011; Ill. Att'y Gen. PAC Req. Rev. Ltr. 12865, issued June 2, 2011.

⁶Letter from Jennifer J. Gibson to Sarah Pratt, Public Access Counselor, Office of the Attorney General (May 1, 2015), at 1-2.

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As discussed above, because the redacted information in these law enforcement records pertain to a vehicular accident, the redacted information is not "personal information" protected by the DPPA, and therefore, is not prohibited from being disclosed. Similarly, State law restrictions on the disclosure of LEADS data do not prohibit disclosure of basic information identifying a driver or his or her vehicle which is incorporated into a police report. Accordingly, we conclude that the City has not sustained its burden of demonstrating that this information is exempt from disclosure under section 7(1)(a) of FOIA.

Section 7(1)(b) of FOIA

The City may, however, redact driver's license numbers, personal license plate numbers, home addresses, personal telephone numbers, and medical records from the reports pursuant to 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2015 Supp.)). Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2015 Supp.)) defines this information as forms of "private information," which is exempt from disclosure under section 7(1)(b) of FOIA. Likewise, the City may redact signatures from the reports pursuant to 7(1)(b) of FOIA, which this office has previously determined are unique identifiers, and therefore, are an exempt form of private information. Ill. Att'y Gen. PAC Req. Rev. Ltr. 98387, issued December 10, 2010. In addition, the City may redact dates of birth from the reports under section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2015 Supp.)), which exempts from disclosure "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." The exemption defines "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." This office has consistently concluded that birth dates are a highly personal form of information, and that the subject's right to privacy outweighs any legitimate public interest in disclosure. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 13417, issued May 18, 2011, at 3.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me by mail at the Chicago address listed on the first page of this letter, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 814-5383.

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Very truly yours,

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